

**BEFORE**

**THE PUBLIC SERVICE COMMISSION OF**

**SOUTH CAROLINA**

**DOCKET NO. 2019-113-E**

IN RE: Gregory M. Parker, Inc. (The Parker	)	
Companies),	)	
	)	
Complainant/Petitioner,	)	
	)	
v.	)	<b>ANSWER OF DOMINION ENERGY</b>
	)	<b>SOUTH CAROLINA, INC.</b>
South Carolina Electric & Gas	)	
Company,	)	
	)	
Defendant/Respondent	)	
_____	)	

Pursuant to S.C. Code Ann. Regs. 103-826 and 103-830 (2015), Defendant/Respondent Dominion Energy South Carolina, Inc. (“DESC” or “Company”), formerly South Carolina Electric & Gas Company (“SCE&G”),<sup>1</sup> answers the complaint of the Complainant/Petitioner Gregory M. Parker, Inc. (The Parker Companies) (“Parker”) as follows:

**ANSWER**

**FOR A FIRST DEFENSE**

**(Response to Allegations of Complaint)**

Each and every allegation of Parker’s Complaint not herein specifically admitted, modified, qualified, or otherwise responded to by DESC is hereby denied, and DESC demands

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<sup>1</sup> South Carolina Electric & Gas Company changed its name to Dominion Energy South Carolina, Inc. on April 29, 2019. See letters dated February 20, 2019, and April 12, 2019, in Docket No. 2017-370-E, advising the Public Service Commission of South Carolina of the name change. Although SCE&G was the corporate entity providing electric service to Parker during the periods at issue in the Complaint, for clarity and brevity, the instant Answer uses the terms “DESC” and “Company” to reference both SCE&G and DESC.

strict proof thereof. DESC answers the following portions of the allegations set forth in the Complaint:

1. The first page of the Complaint consisting of the Individual Complaint Form does not require a response, but to the extent a response is required, DESC denies the allegations set forth in the Individual Complaint Form.

2. DESC admits the allegations of the first sentence of the first unnumbered paragraph of Exhibit A upon information and belief. Responding to the second sentence of the first unnumbered paragraph of Exhibit A, DESC admits only that the Company provides electric service to Parker at certain locations in South Carolina. Responding to the third sentence of the first unnumbered paragraph of Exhibit A, DESC admits only that, on or about December 11, 2008, Parker applied for electric service for its store located 9227 Evan Way, Bluffton, South Carolina ("Store No. 32") with a requested effective date of December 19, 2008. *See* Exhibit No. 1, Parker Application for Store No. 32.<sup>2</sup> Further responding, DESC asserts that Store No. 32 initially received service under Rate 9. *See* Exhibit No. 2, E-Mail from Keith Ackerman dated September 10, 2010. Responding to the fourth and fifth sentences of the first unnumbered paragraph of Exhibit A, DESC admits only that the Company employs account managers to serve as liaisons to and resources for DESC's commercial customers with various account issues. Responding to the sixth sentence of the first unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to what Parker believed, but denies that DESC failed to comply with all applicable regulatory, statutory, and legal requirements. DESC denies any remaining allegations of the first unnumbered paragraph of Exhibit A.

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<sup>2</sup> Each of the Exhibits referenced herein are attached hereto and incorporated herein by reference.

3. Responding to the first sentence of the second unnumbered paragraph of Exhibit A, DESC admits only that, on September 20, 2010, and again on November 3, 2010, Parker executed General Services Agreements (“GSA”) to transfer electric service for Store No. 32 from Rate 9 to Rate 20, which change in service became effective retroactive to September 2, 2010. *See* Exhibit Nos. 3 and 4, GSAs Executed by Parker for Store No. 32. The second sentence of the second unnumbered paragraph of Exhibit A references an attachment and does not require a response, but to the extent a response is required, DESC denies the allegations of the second sentence of the second unnumbered paragraph of Exhibit A. DESC denies any remaining allegations of the second unnumbered paragraph of Exhibit A.

4. Responding to the first sentence of the third unnumbered paragraph of Exhibit A, DESC admits only that, on or about September 1, 2010, Parker applied for electric service for its store located at 469 Buckwalter Parkway, Bluffton, South Carolina (“Store No. 33”) with a requested effective date on or about November 2010. *See* Exhibit No. 5, Application for Store No. 33. Responding to the second sentence of the third unnumbered paragraph of Exhibit A, DESC admits only that, on or about April 12, 2011, Parker executed a GSA and requested that Store No. 33 be transferred from Rate 9 to Rate 20, which change in service became effective retroactive to March 21, 2011. *See* Exhibit No. 6, GSA for Store No. 33. The third sentence of the third unnumbered paragraph of Exhibit A references an attachment and does not require a response, but to the extent a response is required, DESC denies the allegations of the third sentence of the third unnumbered paragraph of Exhibit A. DESC denies any remaining allegations of the third unnumbered paragraph of Exhibit A.

5. Responding to the first sentence of the fourth unnumbered paragraph of Exhibit A, DESC admits only that Parker applied for and requested that DESC provide electric service to the

following stores and that DESC began providing electric service to the stores on or about the following dates:

- a. 6200 Jennifer Court, Bluffton South Carolina 29910 (“Store No. 43”) on October 25, 2013;
- b. 1705 Ribaut Road, Beaufort, South Carolina 29935 (“Store No. 48”) on May 30, 2014;
- c. 16319 Whyte Hardee Boulevard, Hardeeville, South Carolina 29927 (“Store No. 54”) on June 30, 2015;
- d. 7021 N. Okatie Highway, Ridgeland, South Carolina 29936 (“Store No. 55”) on February 19, 2016;
- e. 12 Savannah Highway, Beaufort, South Carolina 29906 (“Store No. 58”), on June 30, 2016; and
- f. 3462 Trask Parkway, Beaufort, South Carolina 29906 (“Store No. 59”), August 25, 2016.

*See* Exhibit Nos. 7, 8, 9, 10 and 11, Applications for Store Nos. 43, 48, 54, 58, and 59; Exhibit No. 12, Initial Bills for Store Nos. 43, 48, 54, 55, 58, and 59. Responding to the second sentence of the fourth unnumbered paragraph of Exhibit A, DESC admits only that the Company provides electric service to Store Nos. 32, 33, 43, 48, 54, 55, 58, and 59 (collectively the “Parker Stores”), asserts that the Parker Stores have varying levels of electric usage and demand, and denies any assertions inconsistent therewith. *See* Exhibit No. 13, E-mail from Amy Lane dated March 18, 2019 (requesting electric service for two new locations, declining service under Rate 20, and electing to receive service under Rate 9 “so that [Parker] can get a feel for the load there” and because they “are not familiar enough with these sites, and neither has a kitchen”). Responding to the third sentence of the fourth unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to the truth of Parker’s assertion that it relied upon DESC, and asserts that, in responding to requests for electrical service at Parker’s stores, DESC complied

with all applicable regulatory, statutory, and legal requirements. DESC denies any remaining allegations of the fourth unnumbered paragraph of Exhibit A.

6. Responding to the first sentence of the fifth unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to what Parker believed, but asserts that Parker had actual notice, constructive notice, and irrefutable knowledge that the Store Nos. 43, 48, 54, 55, 58, and 59 initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9. *See* Exhibit No. 12. Responding to the second and third sentences of the fifth unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to what Parker believes, but denies that the only documents used to commence service for Store Nos. 43, 48, 54, 55, 58, and 59 were the Applications for Service for Store Nos. 58 and 59 attached to the Complaint as Attachment 3. Responding to the fourth, fifth, and sixth sentences of the fifth unnumbered paragraph of Exhibit A, DESC craves reference to the Applications for Service attached to the Complaint as Attachment 3 for a full and complete description of its terms and conditions and denies any allegations inconsistent therewith. DESC denies the allegations of the seventh, eighth, ninth, and tenth sentences of the fifth unnumbered paragraph of Exhibit A. DESC further responds that, pursuant to the plain language of the Company's Commission-approved General Terms and Conditions, "[i]t is the responsibility of the Customer to select the Rate and the Company will not assume responsibility for the choice." *See* Exhibit No. 14, DESC's General Terms & Conditions. DESC further denies that Parker had "chosen" a rate for these new stores or that DESC had "disregarded Parker's chosen rate" inasmuch as Parker had not previously operated Store Nos. 43, 48, 54, 55, 58, and 59, did not advise DESC that it desired these locations to be served under Rate 20, did not

advise DESC of its electric service needs for these locations, and there was no service history for each of these locations. *See* Exhibit No. 13. It therefore was impossible for DESC to ascertain what would be the “most-economical rate at that time.” *Id.* DESC denies any remaining allegations of the fifth unnumbered paragraph of Exhibit A.

7. Responding to the first, second, third, fourth, and sixth sentences of the sixth unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to what Parker believed or its assertion that it relied upon DESC, but denies that DESC failed to comply with all applicable regulatory, statutory, and legal requirements. Responding to the fifth sentence of the sixth unnumbered paragraph of Exhibit A, DESC asserts that it complied with all applicable regulatory, statutory, and legal requirements and denies any allegations inconsistent therewith. DESC denies any remaining allegations of the sixth unnumbered paragraph of Exhibit A.

8. Responding to the first, second, and third sentences of the seventh unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to when or whether Parker conducted a thorough analysis of its operations and structures or of what Parker discovered. DESC further asserts that Parker had actual notice and irrefutable knowledge that Store Nos. 43, 48, 54, 55, 58, and 59 initially received electric service under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9. *See* Exhibit No. 12. Responding to the fourth and fifth sentences of the seventh unnumbered paragraph of Exhibit A, DESC denies that Rate 9 is less economical and less cost-efficient than Rate 20 and asserts that the two rate schedules have different terms and conditions including minimum energy and demand requirements and

contract terms. *See* Exhibit No. 15 and 16, Rate 9 and Rate 20.<sup>3</sup> DESC denies any remaining allegations of the seventh unnumbered paragraph of Exhibit A.

9. DESC denies the allegations contained in the eighth unnumbered paragraph of Exhibit A.<sup>4</sup> DESC further responds that, pursuant to the plain language of the Company's Commission-approved General Terms and Conditions, "[i]t is the responsibility of the Customer to select the Rate and the Company will not assume responsibility for the choice." *See* Exhibit No. 14.

10. Responding to the first sentence of the ninth unnumbered paragraph of Exhibit A, DESC admits that Parker signed GSAs for electric service to Store Nos. 32 and 33 under Rate 20. Responding to the second sentence of the ninth unnumbered paragraph, DESC admits that Parker's did not execute a GSA for Store Nos 43, 48, 54, 55, 58, or 59 until July 2017 and denies any remaining allegations. *See* Exhibit No. 17, GSAs for Store Nos 43, 48, 54, 55, 58, and 59. Responding to the third, fourth, and fifth sentences of the ninth unnumbered paragraph of Exhibit A, DESC craves reference to the Applications for Service attached to the Complaint as Attachment 3 for a full and complete description of its terms and conditions and denies any allegations inconsistent therewith. Responding to the sixth sentence of the ninth unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to what Parker believed, but asserts that Parker had actual notice and irrefutable knowledge that the Store Nos. 43, 48, 54, 55, 58, and 59 initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were

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<sup>3</sup> Exhibit Nos. 15 and 16 reflect the currently effective and Commission-approved version of DESC's Rate Schedules 9 and 20.

<sup>4</sup> The eighth unnumbered paragraph states that "[DESC] applying **Rate 20** was done without express authorization ..." (Emphasis added). DESC assumes Parker intended to reference Rate 9.

receiving service under Rate 9. *See* Exhibit No. 12. DESC denies any remaining allegations of the ninth unnumbered paragraph of Exhibit A.

11. DESC denies the allegations contained in the tenth unnumbered paragraph of Exhibit A. Further responding, DESC asserts that Parker had actual notice and irrefutable knowledge that the Store Nos. 43, 48, 54, 55, 58, and 59 initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9. *See* Exhibit No. 12.

12. The first and eighth sentences of the eleventh unnumbered paragraph of Exhibit A are characterizations of DESC's legal defenses and rights and does not require a response. To the extent a response is required, however, DESC denies the allegations of the first and eighth sentences of the eleventh unnumbered paragraph of Exhibit A. Responding to the second sentence of the eleventh unnumbered paragraph of Exhibit A, DESC admits only that the bills for Store Nos. 43, 48, 54, 55, 58, and 59 provided Parker with actual notice and irrefutable knowledge that these stores initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9. *See* Exhibit No. 12. Further responding to the second sentence of the eleventh unnumbered paragraph of Exhibit A, DESC is without knowledge or information sufficient to form a belief as to which of Parker's departments receives and processes electric service bills, but denies that the only purpose of an electric service bill is so that the bill can be paid. Responding to the third and fifth sentences of the eleventh unnumbered paragraph of Exhibit A, DESC craves reference to the identified spreadsheet for a full and complete description of its language, terms, and conditions and denies any allegations inconsistent therewith. *See* Exhibit No. 18, Affidavit of Henry Parks Moss III, Attachments B, C, and D. Further responding, DESC asserts that the



identified spreadsheets reflect converting Store No. 48 to Rate 21, and not Rate 20 as alleged, would have resulted in further reduced charges for electrical service at this location. *See id.*; Exhibit No. 19, Rate 21.<sup>5</sup> Responding to the fourth sentence of the eleventh numbered paragraph of Exhibit A, DESC admits that the identified spreadsheet has previously been provided to the South Carolina Office of Regulatory Staff (“ORS”) in connection with its review of an informal complaint filed by Parker’s in 2017. *See* Exhibit No. 20, DESC Response to Informal Complaint filed by Parker with ORS; Exhibit No. 21, ORS Response Letter to Informal Complaint filed by Parker. DESC denies the allegation of the sixth sentence of the eleventh unnumbered paragraph of Exhibit A. Responding to the allegations of the seventh sentence of the eleventh unnumbered paragraph of Exhibit A, DESC asserts that the spreadsheet and contract gave further actual notice and irrefutable knowledge that Store No. 48 initially received electric service from DESC under Rate 9. *See* Exhibit No. 18, Attachments C and D. DESC denies any remaining allegations of the eleventh unnumbered paragraph of Exhibit A. Further responding, DESC denies that it failed to comply with all applicable regulatory, statutory, and legal requirements and asserts that Parker had actual notice and irrefutable knowledge that the Store Nos. 43, 48, 54, 55, 58, and 59 initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9. *See* Exhibit No. 12.

13. Responding to the allegations of the twelfth unnumbered paragraph of Exhibit A, DESC denies that it failed to comply with all applicable regulatory, statutory, and legal requirements, asserts that Parker had actual notice and irrefutable knowledge that the Store Nos.

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<sup>5</sup> Exhibit No. 19 reflects the currently effective and Commission-approved version of DESC’s Rate Schedule 21.

43, 48, 54, 55, 58, and 59 initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9, *see* Exhibit No. 12, and denies anything inconsistent therewith. DESC denies any remaining allegations of the twelfth unnumbered paragraph of Exhibit A.

14. Responding to the allegations of the thirteenth unnumbered paragraph of Exhibit A, DESC denies that it failed to comply with all applicable regulatory, statutory, and legal requirements, asserts that Parker had actual notice and irrefutable knowledge that the Store Nos. 43, 48, 54, 55, 58, and 59 initially received electric service from DESC under Rate 9 by virtue of its receipt of monthly bills for each location, which specifically stated that these locations were receiving service under Rate 9, *see* Exhibit No. 12, and denies anything inconsistent therewith. Further responding, DESC asserts that, upon information and belief, DESC provided to Parker, within sixty days of its application for electric service to the stores identified in Paragraph 6 of the Complaint and annually thereafter, a clear and concise explanation of the available rate schedules for the class of service for which Parker made application for service in substantially the same form as the document contained in Exhibit No. 22, the current version of which is attached hereto and incorporated herein by reference. DESC denies any remaining allegations of the thirteenth unnumbered paragraph of Exhibit A.

15. Exhibit B to Parker's Complaint constitutes a prayer for relief not requiring an answer, but to the extent an answer is required, it is denied.

**FOR A SECOND DEFENSE**

**(Statute of Limitations for Reparation Orders)**

16. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

17. Parker requests that the Commission order DESC to pay Parker reparations for alleged past overpayments made by Parker to DESC. *See* Complaint, Ex. B.

18. On or about December 11, 2008, Parker applied for electric service at Store No. 32, with a requested effective date on or about December 19, 2008. *See* Exhibit No. 1.

19. Store No. 32 initially received service under Rate 9. *See* Exhibit No. 2. Following a request from Parker to review the electric service provided to Store No. 32 in early September 2010 (approximately one year and nine months after initially applying for electric service at this location), DESC determined that transferring this location to Rate 20 would result in reduced electric charges for this location. *Id.*

20. Rate 20 requires customers to enter into a written contract for a period of no less than five years. *See* Exhibit No. 16.

21. As required by Rate 20, Parker, on or about September 20, 2010, and November 3, 2010, executed GSAs for Store No. 32.<sup>6</sup> *See* Exhibit Nos. 3 and 4. Through this agreement, Parker requested that Store No. 32 be transferred to Rate 20, agreed to an initial contract term of five years, and agreed that, if service was terminated prior to the expiration of the initial term to pay “a termination charge equal to 90% of the maximum demand set during the term times the number of months remaining in the contract period.”

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<sup>6</sup> As reflected in Exhibit No. 3, Parker executed an initial GSA for Store No. 32 on September 20, 2010. As reflected on Exhibit A, Attachment 1 to the Complaint and Exhibit No. 4 hereto, that GSA was later re-executed by Parker on November 3, 2010 because of an incorrect account number on the initial GSA. Nevertheless, DESC adhered to the original proposed effective date of September 2, 2010.

22. No later than the date Parker executed this written agreement, which first occurred on or about September 20, 2010, Parker had actual notice and irrefutable knowledge of the existence of Rate 20 and that it was required to execute a GSA in order for a certain location to take service under Rate 20.

23. Subsequently, Parker applied for and began receiving electric service at Store No. 33. This location also initially received service was under Rate 9, until a GSA for Store No. 33 was executed approximately six months later on or about April 12, 2011. *See* Exhibit No. 6.

24. As a result of its executions of GSAs for both Store Nos. 32 and 33, Parker had actual notice and irrefutable knowledge that, in order to receive electric service under Rate 20 at a new location, it was required to execute a GSA for each location.

25. Between September 30, 2013 and June 23, 2016, Parker subsequently applied for electric service for six additional locations in South Carolina. *See* Exhibit Nos. 7, 8, 9, 10, 11, and 12.

26. In accordance with S.C. Code Ann. Regs. 103-330(b), and the Company's internal policies, DESC provides "to each new residential and small commercial customer, within sixty days of application for service, a clear and concise explanation of the available rate schedules for the class of service for which the customer makes application for service."

27. Upon information and belief, DESC provided to Parker, within sixty days of its application for electric service to the stores identified in Paragraph 6 of the Complaint and annually thereafter, a clear and concise explanation of the available rate schedules for the class of service for which Parker made application for service in substantially the same form as the document contained in Exhibit No. 22.

28. Around the time Parker requested service for Store No. 54, an DESC account representative had several conversations with Ms. Patricia Sweat who had been identified by Parker as a Business Contact and Accounts Payable Contact for matters pertaining to Parker's electric service accounts and who Parker had identified as its corporate Secretary. *See* Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, and 8; Exhibit No. 18 at ¶8, Attachment A. In the course of those conversations, the account manager advised Ms. Sweat that a review of Parker's rates should be conducted for the then-existing stores. *See* Exhibit No. 18 at ¶9. On or about August 11, 2015, the account representative conducted a "best rate" analysis for certain of Parker's then-existing locations, which showed that Store Nos. 43 and 48 were then served under Rate 9, and provided the information to Ms. Sweat. *Id.* at ¶10, Attachment B. Although these documents showed that Store Nos. 43 and 48 would have reduced electric service charges under either Rate 20 or Rate 21; Ms. Sweat refused to make a decision regarding a change in the applicable rate schedules for these locations. *Id.* In or around mid-September 2015, the account representative also hand delivered to Ms. Sweat at Parker's office in Savannah an account review package for Store No. 48, which included a GSA form to transfer Store No. 48 from Rate 9 to Rate 21. *Id.* at ¶11, Attachment C. In addition, the account representative prepared two updated best rate analyses for Store No. 48 on August 31, 2015, and on September 10, 2015. *Id.* at ¶12, Attachment D. Although the Company does not have records specifically reflecting which of these analyses was provided, the account representative hand delivered at least one, if not both, of these documents to Ms. Sweat. *Id.* These best rate analyses showed that Rate 21 would be the most appropriate rate for Store No. 48 in terms of the rates charged. The account representative requested that Ms. Sweat provide the information to the appropriate person at Parker's to make a decision about rates; however, DESC received no

response to the information provided and received no further inquiries from Parker at that time. *See* Exhibit No. 18, at ¶¶13-14.

29. Additionally, and in accordance with S.C. Code Ann. Regs. 103-339(2), DESC's bills issued to customers show "[t]he applicable rate schedule or identification of the applicable rate schedule." *See* Exhibit No. 12.

30. Each of the bills issued to Parker for Store Nos. 43, 48, 54, 55, 58, and 59 after service became effective until the time Parker executed GSAs to transfer these locations to Rate 20 made clear that these locations were receiving service under Rate 9. *See* Exhibit No. 12.

31. As reflected in the Complaint, Parker received these bills and, therefore, received notice each month that these locations received electric service under Rate 9. *See* Complaint, Exhibit A at p. 4; Exhibit No. 12.

32. This action was brought on or about March 28, 2019, over eight and one-half (8 1/2) years after Parker had actual notice and irrefutable knowledge that it had an option to apply for electric service from DESC pursuant to Rate Schedule 20. In addition, this action was brought approximately two years and six months after DESC specifically advised Parker Store No. 48 would experience reduced charges for electrical service under Rate 21 as opposed to Rate 20. This action also was not brought until:

- 1) almost five and five months after Parker had actual notice that Store No. 43 initially received service under Rate 9;
- 2) almost four years and nine months after Parker had actual notice that Store No. 48 initially received service under Rate 9;
- 3) almost three years and eight months after Parker had actual notice that Store No. 54 initially received service under Rate 9;
- 4) over three years after Parker had actual notice that Store No. 55 initially received service under Rate 9;

- 5) over two years and eight months after Parker had actual notice that Store No. 58 initially received service under Rate 9; and
- 6) over two years and six months after Parker had actual notice that Store No. 59 initially received service under Rate 9.

*See* Exhibit No. 12.

33. The statute of limitations for petitions seeking the payment of reparations when an electrical utility is alleged to have charged excessive amounts for electric current or service is two years from the time the cause of action accrues. S.C. Code Ann. § 58-27-960 (Supp. 2018).

34. This action is time-barred by the applicable statute of limitations and, therefore, should be dismissed.

### **FOR A THIRD DEFENSE**

#### **(General Statute of Limitations)**

35. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

36. Assuming, without conceding, that the two-year statute of limitations set forth in S.C. Code Ann. § 58-27-960 does not apply to this action, any causes of action related to Store Nos. 43, 48, 54, and 55 are time barred by the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530 and should be dismissed.

### **FOR A FOURTH DEFENSE**

#### **(Laches)**

37. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

38. Parker unreasonably delayed in bringing this action against DESC.

39. DESC has been prejudiced by Parker's unreasonable delay.

40. Parker did not seek to protect its purported rights in a timely fashion.

41. Parker's claims therefore are barred by the equitable doctrine of laches and should be dismissed.

**FOR A FIFTH DEFENSE**

**(Failure to State Facts Sufficient to Constitute a Cause of Action)**

42. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

43. The Complaint fails to state a cause of action. There is no allegation of any act or thing done or omitted to be done by DESC which forms the basis for a complaint cognizable under the law or for which this Commission is empowered to grant relief. *See* S.C. Code Ann. § 58-27-1940 (Supp. 2018).

44. Parker failed to file the Complaint within the applicable statute of limitations.

45. Parker failed to timely file the Complaint, unreasonably delayed in bringing this action, and, in so doing, prejudiced DESC.

46. Parker's claims are barred by the statute of limitations and by laches.

47. Parker's Complaint therefore fails to state facts sufficient to constitute a cause of action.

**FOR A SIXTH DEFENSE**

**(Waiver)**

48. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

49. The acts and omissions of Parker constitute a voluntary and intentional relinquishment of any right that Parker may have had for alleged past overpayments made by Parker to DESC.



50. Parker's claims are therefore barred by the doctrine of waiver and should be dismissed.

**FOR A SEVENTH DEFENSE**

**(Reasonableness and Good Faith)**

51. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

52. DESC's actions were reasonable, were not arbitrary, were not capricious, and were made in good faith. By asserting this defense, DESC does not assume the responsibility to meet any burden of proof imposed on Parker by statute or common law.

**FOR AN EIGHTH DEFENSE**

**(Estoppel)**

53. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

54. Parker's claims are barred by the doctrine of estoppel.

**FOR A NINTH DEFENSE**

**(Intervening Acts)**

55. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

56. DESC's Commission-approved General Terms and Conditions provide that "[i]t is the responsibility of the Customer to select the Rate and the Company will not assume responsibility for the choice." *See* Exhibit No. 12.

57. Parker failed to request electric service pursuant to Rate 20 or Rate 21 at any store other than Store Nos. 32 and 33 until July 2017.

58. Despite the significant time period that passed after Parker had actual notice and irrefutable knowledge of the availability of Rate 20 and that Store Nos. 43, 48, 54, 55, 58, and 59 initially received service under Rate 9, Parker continued to accept service from and remit payment to DESC for electric service rendered to these locations pursuant to the rates, terms, and conditions of Rate 9.

59. Parker's alleged damages, if any and DESC denies that any damages were suffered, were caused solely by their own acts, representations, omissions, or circumstances and/or those of third parties.

**FOR A TENTH DEFENSE**

**(Unclean Hands)**

60. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

61. Parker's claims are barred by the doctrine of unclean hands.

**FOR AN ELEVENTH DEFENSE**

**(Consent)**

62. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

63. Parker's claims are barred by the doctrine of consent.

**FOR A TWELFTH DEFENSE**

**(No Damages)**

64. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

65. Parker has suffered no damages.

**FOR A THIRTEENTH DEFENSE**

**(Failure to Mitigate Damages)**

66. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

67. Parker has failed, in whole or in part, to mitigate the alleged damages.

**FOR A FOURTEENTH DEFENSE**

**(Right to Add Additional Affirmative Defenses)**

68. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

69. DESC reserves the right to amend this Answer to include additional affirmative defenses that may become apparent throughout the course of further investigation and/or discovery.

Wherefore, having fully answered Parker's Complaint, DESC prays that the relief sought be denied, that the Complaint be dismissed with prejudice, and for such other and further relief as the Commission may deem just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

s/Benjamin P. Mustian

K. Chad Burgess, Esquire

Matthew W. Gissendanner, Esquire

**Dominion Energy South Carolina, Inc.**

Mail Code C222

220 Operation Way

Cayce, South Carolina 29033-3701

Phone: (803) 217-8141 (KCB)

(803) 217-5359 (MWG)

Fax: (803) 217-7810

Email: chad.burgess@scana.com

matthew.gissendanner@scana.com

Mitchell Willoughby, Esquire

Benjamin P. Mustian, Esquire

**WILLOUGHBY & HOEFER, P.A.**

930 Richland Street

PO Box 8416

Columbia, SC 29202-8416

Telephone: (803) 252-3300

Facsimile: (803) 256-8062

mwilloughby@willoughbyhoefer.com

bmustian@willoughbyhoefer.com

*Attorneys for Dominion Energy South Carolina,  
Inc.*

April 29, 2019  
Columbia, South Carolina